

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST FOR CONFIDENTIAL TREATMENT)	
OF INFORMATION FILED WITH AT&T)	
COMMUNICATIONS OF THE SOUTH CENTRAL)	CASE NO. 93-339
STATES, INC.'S PROPOSED CONTRACT)	
WITH BAPTIST HEALTH CARE SYSTEMS,)	
INC.)	

O R D E R

This matter arising upon petition of AT&T Communications of the South Central States, Inc. ("AT&T") filed September 13, 1993 pursuant to 807 KAR 5:001, Section 7, for confidential protection of the prices, terms, and conditions of a proposed service agreement with Baptist Health Care Systems, Inc. on the grounds that disclosure of the information is likely to cause AT&T competitive injury, and it appearing to the Commission as follows:

AT&T has entered into a service agreement with Baptist Health Care Systems, Inc. The agreement is subject to Commission approval and AT&T seeks to protect the prices, terms, and conditions of the agreement as confidential. The information sought to be protected is not known outside of AT&T and is not disseminated within AT&T except to those employees who have a business need to know and act upon the information. AT&T seeks to preserve the confidentiality of the information through all appropriate means including a non-disclosure agreement with Baptist Health Care Systems, Inc.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted

by statute. Exemptions from this requirement are provided in KRS 61.878(1). That section of the statute exempts 11 categories of information. One category exempted in subparagraph (c) of that section is commercial information confidentially disclosed to the Commission. To qualify for that exemption, it must be established that disclosure of the information is likely to cause substantial competitive harm to the party from whom the information was obtained. To satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

The exemptions provided by KRS 61.878(1) are not applicable to the prices and conditions AT&T has agreed to for the service to be provided. Prices, which are a form of rates, and conditions for service are governed by the provisions of KRS 278.160. That statute requires utilities to file with this Commission schedules of their rates and conditions of service, and to display those schedules for public inspection. It is a well settled principle of statutory construction that a specific provision relating to a particular subject takes precedence over a general provision relating to the same subject. This principle was recognized by the Kentucky Court in Land v. Newsom, Ky., 614 S.W.2d 948, 949 (1981), when the Court stated:

One of the established rules of statutory construction is that when two statutes deal with the same subject matter, one in a broad, general way and the other specifically, the specific statute prevails.

Because the public disclosure requirements of KRS 278.160 are specifically applicable to utility rates and service conditions, they take precedence over the general exemption provisions of KRS 61.872(1). Thus, the prices to be charged and the conditions agreed upon for the service contracted for are not entitled to confidential protection.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential the price, terms, and conditions of the proposed contract between AT&T and Baptist Health Care Systems, Inc. be and is hereby denied.

2. The information sought to be protected shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Orders herein.

Done at Frankfort, Kentucky, this 12th day of November, 1993.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner